



State of New Hampshire Guardian ad Litem Board



25 Capitol Street - Room 120, Concord, New Hampshire 03301
TDD Access: Relay NH 1-800-735-2964

Phone: (603) 271-1199
Web site: www.nh.gov/gal
E-mail: gal.board@nh.gov

In the Matter of:

**Rebecca Young Hewson
Adjudicatory/Disciplinary Proceeding**

Docket # 2014-C0006

DECISION AND ORDER

Before the Guardian ad Litem Board (the Board) is the matter of Rebecca Young Hewson following a complaint to the Board that Ms. Hewson did not show up for court ordered hearings, did not return the retainer fee to the parties, and changed her address and did not notify the court or the Board.

BACKGROUND INFORMATION

On August 8, 2014, the Board received a complaint from The Honorable Paul D. Desjardins regarding Ms. Hewson.

On September 19, 2014, the Guardian ad Litem Board reviewed the case and voted to request a GAL response.

On September 22, 2014, the letter requesting a GAL Response was sent via certified return receipt mail and signed for on September 30, 2014.

The GAL Response was due on October 22, 2014.

No response was received.

On November 21, 2014, the Board voted to proceed to a hearing, pursuant to its authority under RSA 490-C:4, I(g), to determine whether Ms. Hewson violated the rules of the Guardian ad Litem Board

On November 24, 2014, the Notice of Hearing was mailed via certified return receipt and signed for by R. Hewson on November 28, 2014.

On December 1, 2014, an amended Notice of Hearing was mailed via certified return receipt to the PO Box provided by the court.

On December 29, 2014, the amended Notice of Hearing was mailed via certified return receipt to the home address listed on Ms. Hewson's application.

On December 31, 2014, the amended Notice of Hearing sent to the PO Box was returned as unclaimed.

On January 6, 2014, the amended Notice of Hearing sent to her home address was returned as no such street.

The notice of hearing provided that the following specific issues would be determined at the adjudicatory/disciplinary proceeding:

Whether Ms. Hewson violated Gal RULE 404.01(a3) Updating of Information and Provision of Information Upon Request of the Board. (a) A guardian ad litem currently certified by the board shall notify the board of any change in: (3) The mailing address of his or her guardian ad litem business;

Whether Ms. Hewson violated Gal RULE 503.02(a),(c),(d) General Obligations of All Guardians Ad Litem. (a) Unless otherwise specified in an order or other instruction of the appointing court, a guardian ad litem shall at all times act in what he or she, in good faith, believes to be in the best interests of the recipient of services. (c) A guardian ad litem shall perform those duties assigned to him or her by the appointing court. (d) A guardian ad litem shall, in good faith: (1) Formulate a recommendation, or such other report as is directed by the appointing court, as is intended to address the best interests of the recipient of services or such other matter as directed by the orders or other instructions of the appointing court; and (2) Develop a presentation to the court that is designed to achieve results that are in the best interests of the recipient of services or such other result as set forth in the orders or other instructions of the appointing court.

Whether Ms. Hewson violated Gal RULE 503.03(a),(b),(c) Timeliness. A guardian ad litem shall: (a) Undertake actions on behalf of a recipient of services in a manner that is sufficiently timely to avoid prejudice to the best interests of the recipient of services or such other object of appointment as specified in the orders or other instructions of the appointing court; (b) Adhere to all applicable deadlines imposed by an appointing court or by statute; (c) Timely appear for all scheduled hearings, conferences, mediation sessions and other court proceedings, unless excused by the court;

Whether Ms. Hewson violated Gal RULE 503.04(a), (b1), (b2),(b4), (b5) Competency. (a) A guardian ad litem shall carry out the duties of his or her appointment with sufficient competence to complete the work without avoidable harm to the best interests of the recipient of services. (b) The competence required by (a) above shall include: (1) Diligence, attention to detail and promptness in the scheduling and performance of the duties of the appointment; (2) Preparation for the meetings, interviews and court appearances required by the appointment; (4) Knowledge of these rules; and (5) Knowledge of the procedures and requirements of the appointing court sufficient to carry out the duties of the appointment.

Whether Ms. Hewson violated Gal RULE 503.05(c) Advocacy. (c) A guardian ad litem shall endeavor to expedite the conclusion of the case to the extent that he or she, in good faith, believes that to do so is consistent with the best interests of the recipient of services or such other purpose of his or her appointment as is set forth in the orders or other instructions of the appointing court.

Whether Ms. Hewson violated Gal RULE 503.11(f) Fees. (f) If, at the conclusion of a case, the guardian ad litem is in possession of any unearned fees, he or she shall return those fees to the person who paid them to the guardian ad litem, or in such other manner as that person or the fee agreement may direct.

Whether Ms. Hewson violated Gal RULE 503.12(a) *Gathering and Reporting Facts and Other Information.* (a) *A guardian ad litem shall gather such facts and information regarding the family history, background, current circumstances, concerns and wishes of the recipient of services, from the recipient of services and from other sources, as will enable the guardian ad litem to: (1) Form a good faith conclusion about the best interests of the recipient of services or about such other matters as directed by the orders or instructions of the appointing court; and (2) Conduct his or her duties in conformity with these rules and the instructions of the appointing court.*

Whether Ms. Hewson violated Gal RULE 503.15(a), (b) *Termination of Representation.* (a) *Upon the termination of a guardian ad litem's appointment, the guardian ad litem shall take such steps as he or she in good faith believes are necessary to protect the best interests of the recipient of services. (b) The steps described in (a) above shall include, but not be limited to, the following:*

(1) Surrendering papers and property to which the recipient of services, the parties or the court may be entitled; (2) Refunding and transferring any unearned fees; and (3) To the extent possible, taking action in a sufficiently timely manner as to allow time for appointment of another guardian ad litem.

Whether Ms. Hewson violated Gal RULE 505.02(g) *Accounts.* (g) *Upon the conclusion of a case, a guardian ad litem shall return any unearned fees in his or her possession to the person who paid them to the guardian ad litem, or in such other manner as that person or the written fee agreement may direct.*

Board member Chris Keating served as Presiding Officer and Don Nason served as Prosecutor.

HEARING

An adjudicatory hearing was held on January 16, 2015 in room 101 of the Legislative Office Building, Concord.

Present were Board members: Alan Cantor, Susan Duncan, Master Henrietta Luneau, Chris Keating, Presiding Officer, Betsy Paine, David Villiotti

Also present Don Nason Prosecutor.

The respondent Rebecca Hewson was not in attendance.

Presiding Officer Christopher Keating stated for the record The Board made multiple attempts in compliance with GAL 208.02(c) *At least 14 days before any hearing relative to a complaint against a guardian ad litem the board shall provide the guardian ad litem and the complainant with the notice specified in Gal 208.01(b) either: (2) By certified mail, with return receipt requested, and by postage prepaid first class United States mail.* to notify the GAL using the addresses she provided to the Board and the address provided from the court. All attempts were made via certified return receipt USPS. The GAL did not pick up the Notice of Hearing at the PO Box provided by the Court and when sent to her home address provided on her application it was sent back as no such address. The Board has done its due diligence in attempting to notify Ms. Hewson of the hearing and can proceed without her present in compliance with GAL 210.02 (c) *If the party who does not have the overall burden of proof fails to attend the hearing after having been given notice in accordance with Gal 208.01, the testimony and evidence of all other parties or intervenors shall be received and evaluated..* It is also noted for the record that the original Hearing notice scheduled for December was picked up at the Tamworth PO Box by Roy Hewson.

Master Luneau swore in Don Nason.

The record in this case consists of the following:

Documents from the Board's file on Ms. Hewson:

Complaint against Rebecca Young Hewson filed by The Honorable Paul D. Desjardins on August 8, 2014.

Notice of Hearing dated November 24, 2014

Amended Notice of Hearing dated December 1, 2014.

Amended Notice of Hearing dated December 29, 2014 with home address.

Returned Amended Notice Hearing unclaimed December 31, 2014.

Returned Amended Notice of Hearing no such street January 6, 2015.

Summary of Evidence

Mr. Nason testified that using his investigator resources he checked into and did not find that Ms. Hewson has been arrested, hospitalized or passed away. He also said there has been no action on her social media accounts. Mr. Nason also testified that he was able to pull all of her recent addresses. None of those addresses match what was on her application for certification as a GAL.

Mr. Nason said there were the following issues:

1. Ms. Hewson did not notify the Board or the Courts of her change of address.
 - a. On April 23, 2013 the court sent Ms. Hewson the Order of Appointment and it was returned to the court in June because the PO Box had been closed
2. Ms. Hewson did not act in best interest of recipient services by not staying in contact, attend hearings, provide reports, did not appear for show cause hearing and did not comply with a court order to return the retainer of \$1,000. She also did not prepare or provide reports as ordered by the court.
3. Ms. Hewson never contacted either of the parties in the case and did not appear for hearings.
4. By not providing the court with her correct contact information and by not providing reports as ordered she caused undo delay in the case.
5. Ms. Hewson did not take timely action by not submitting a preliminary report as ordered by the court.
6. Ms. Hewson did not appear for a show cause hearing on the matter of returning the retainer fee.
7. If there was something going on that she could not uphold her duties she should have notified the court.

FINDINGS OF FACT

1. Ms. Hewson did not provide a current mailing address to the Courts or the Board.
2. Ms. Hewson did not attend the hearing on 11/13/13 and did not notify the parties or the court.
3. On 4/30/14 The Honorable Judge Desjardins issued an order discharging Ms. Hewson from the case and ordering her to return the entire retainer fee of \$1,000.00.
4. On 6/13/14 a show cause hearing was held in the matter of the retainer fee and Ms. Hewson did not show up.
5. Ms. Hewson never contacted either party in this case.
6. Ms. Hewson did not file any reports in the case as ordered by the court.

RULINGS OF LAW

1. Ms. Hewson violated GAL 404.01(a3) by not informing the Board and the Courts of her address change
2. Ms. Hewson violated GAL 503.02(a), (c), (d) by not submitting reports to the Court as ordered.
3. Ms. Hewson violated GAL 503.03(a),(b),(c) by not appearing for hearings, adhering to deadlines.
4. Ms. Hewson violated GAL 503.04 (a),(b1),(b2),(b4),(b5) by not completing her work in this case and causing undo delay, not providing reports as ordered by the court, not having knowledge of GAL rules, sufficiently carrying out the duties of her appointment.
5. Ms. Hewson violated GAL 503.05(c) by not expediting the conclusion of the case.
6. Ms. Hewson violated GAL 503.11(f) by not returning the retainer fee once she was dismissed from the case.
7. Ms. Hewson violated GAL 503.12(a) by not meeting with the parties and filing reports with the court.
8. Ms. Hewson violated GAL 503.15(a),(b) by not returning the fees to the parties and not asking to be released from the case.
9. Ms. Hewson did not violate GAL 505.02(g) based on inconclusive evidence. The Board does not know if the case is closed.

DISCUSSION AND CONCLUSION

Due to Ms. Hewson's absence at the hearing there was no contradictory evidence presented.

SANCTIONS

Gal 402.02 Standard for Imposition of Penalties and Sanctions provides the standards for imposing sanctions on certified guardians ad litem who have been found by the Board to have violated the requirements of RSA 490-C and rules adopted by the Guardian ad Litem Board.

Gal 402.02

- (a) In determining whether or which sanctions or penalties to impose in a particular case, the board shall:
 - (1) Consider whether extenuating circumstances exist pursuant to Gal 503.01 (e); and
 - (2) In the absence of extenuating circumstances, consider the following when determining the penalty or sanction, or the combination of penalties or sanctions, to be imposed:
 - a. The nature and magnitude of the infraction, including the nature of the harm that was, or may have been, caused by the act or omission at issue;
 - b. Whether a particular penalty is prescribed by the rules of the board;
 - c. The particular circumstances relating to the act or omission at issue;
 - d. The probable reason or reasons for the act or omission;
 - e. The person's past history of discipline, sanction or penalty, if any, imposed by the board, or by any other entity charged with overseeing the conduct of the person charged;

- f. Whether the person has cooperated with any investigation into the matter under consideration; and
 - g. Whether the person may have violated the ethical standard and standard of practice set forth at Gal 503.02 (a), relating to acting in the best interests of the recipient of services.
- (b) In cases in which a penalty or sanction is to be imposed, the board shall impose such penalty or sanction, or combination of penalties and sanctions, as it concludes:
- (1) Takes into account the factors set forth in (a) (2) above;
 - (2) Will likely:
 - a. Convey to the person the importance of adhering to the requirements of the rule or law violated, or rules and laws generally; or
 - b. Assist the person in conforming his or her future conduct to the requirements of rules or law, either in general or as they relate to the functions of guardians ad litem;
 - (3) Will likely serve as a general deterrent to the commission of a similar violation by other persons in the future;
 - (4) Is or are not disproportionate to the magnitude of the act or omission at issue;
 - (5) Will likely be perceived by the general public as fair in light of the particular circumstances of the offense; and
 - (6) Will not, if imposed, be likely to increase a risk of harm to the health, safety, welfare or best interests of any recipient of services or potential recipient of services.

The Board finds that extenuating circumstances do not exist pursuant to Gal 503.16 based on the evidence provided at the hearing.

THEREFORE IT IS ORDERED that Rebecca Hewson is conditionally certified pursuant to Gal 402.03 (c) solely for the purposes of imposing the discipline of revocation.

THEREFORE IT IS ORDERED pursuant to GAL 402.01(a)(1), that Rebecca Young Hewson's certification is revoked.

IT IS FURTHER ORDERED that pursuant to Gal 402.03(d) conditional certification for the purposes of disciplinary revocation under paragraph (c) above shall: (1) Not preclude the imposition of additional sanctions, either before or after revocation, under the standards set forth in Gal 402.02; (2) Be solely for the purposes of imposing the sanction of revocation; (3) Not be construed or represented by the person conditionally certified as a conclusion by the board that the person so conditionally certified meets the qualifications of Gal 303.01 or Gal 401.10; and (4) Expire immediately upon the imposition of the sanction of revocation.

IT IS FURTHER ORDERED that respondent Rebecca Young Hewson immediately notify any courts in which she currently holds an appointment as guardian ad litem of the results of this disciplinary hearing.

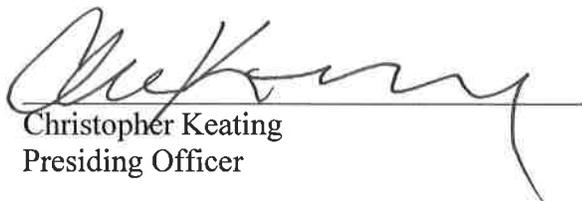
IT IS FURTHER ORDERED that a copy of this order be delivered to the Administrative Office of the Courts, the Administrative Judges of the Superior, Circuit Courts.

Appeals from orders of the Board may be taken pursuant to RSA 541. See RSA 490-C:8. Within 30 days of the date of this decision, the respondent may appeal by petition for a writ of certiorari to the New Hampshire Supreme Court. See RSA 541:6.

IT IS FURTHER ORDERED that a fine of \$800 be imposed with \$500 suspended upon proof of a returned retainer to the parties within 30 days of this order. The payment is due 30 days from the date of this order. A check may be made out to Guardian ad Litem Board and mailed to the address above.

BY ORDER OF THE BOARD

DATE: January 29, 2015



Christopher Keating
Presiding Officer

cc: The Honorable Paul D. Desjardins
1st Circuit Court Family Division 650 Main St. Suite 100 Berlin, NH 03570-2471
Rebecca Young Hewson
PO Box 174 Tamworth, NH 03886
Don Nason, Prosecutor
75 S. Main St. Unit 7-302, Concord, NH 03301
Amanda Godlewski, Assistant Attorney General, New Hampshire Department of Justice,
33 Capitol Street, Concord, New Hampshire 03301
The Honorable Judge Edwin Kelly
Circuit Court Administrative Office 45 Chenell Drive Suite 2 Concord, NH 03301
The Honorable Judge Tina Nadeau
Superior Court Center 45 Chenell Drive Suite 1 Concord, NH 03301
Attorney Don Goodnow, Administrative Office of the Courts
2 Charles Doe Drive, Concord, NH 03301

